**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**APPELLATE CIVIL JURISDICTION**

**WRIT PETITION NO.4418 OF 2005**

Shri Abdul Wahab Abdul Razzak & ors.Petitioners

versus

Shri Nazir Ahmed Sharfuddin Mulla & ors..Respts

Mr.K.S.Dewal,Advocate for Petitioners

Mr.P.S.Dani, Advocate for Respondent nos.1 to 7.

**CORAM : J.N.PATEL,J**

**DATED : 25th July, 2006**

**ORAL ORDER :**

1. Heard learned counsel for the petitioners. The petitioner who is the original plaintiff has impugned the order passed by the trial Court below Exhibit 63 wherein a preliminary issue is to the effect that " Whether the Court has jurisdiction in

subject matter of the suit to entertain, try and decide the present suit. " In response to this, the respondent (Original Defendant no. 3) filed an application seeking recasting of the issue. As the question involved is whether tenancy law is attracted in case of the subject matter of the suit and has suggested recasting of the issue.

2. On going through the preliminary issue, it is quite evident that the learned trial Court has not framed a specific issue and the preliminary issue is of a general nature and it does not put the parties to notice as to what it means and therefore the impugned order of the Court and framing of the preliminary issue is quashed and set aside and the trial Court is directed to recast the issue by using appropriate words. Learned counsel for the parties agree to submit the draft issues to the Court so as to assist the trial Court in framing the issues. With these directions, petition stands disposed of with no order as to costs.

**(J.N.Patel, J)**